

Serial No. 10/027,741
Attorney Docket No. RPC 0579 PUS

REMARKS

Claims 1-23 and 27-33 are pending. Claims 5 and 6 are allowed and the Examiner has indicated that claims 18 and 19 would be allowed if amended into independent form.

Until the telephone interview after the Advisory Action, the Examiner had not explained or withdrawn his obviousness rejections over Smyers (US 6,460,717). Applicant indicated previously in its December 2003 Amendment:

... pursuant to Section 103(c), the subject matter in the Smyers patent and the claimed invention were, at the time the present invention was made, owned by the same entity and were subject to an obligation of assignment to the same entity. This is further evidenced by the assignments of record of the Smyers patent and the present application to the current assignee. Therefore, the rejections of claims 8-17 and the finality of the last office action should immediately be withdrawn.¹

Before that, in response to the first office action, Applicant indicated:

Pursuant to Section 103(c), the subject matter in the Smyers patent and the claimed invention were, at the time the invention was made, owned by the same entity and were subject to an obligation of assignment to the same entity. This is evidenced by the assignments of record of the Smyers patent and the present application to the current assignee. Therefore, pursuant to 103(c), this obviousness rejection should be withdrawn.²

Not until the telephone interview did the Examiner indicate that he believed the statement to be insufficient for the reason that it says the applications were owned and subject to an obligation to assignment by the same "entity." The Examiner indicated that the statement should have said "company" or "person."

Because the term "entity" includes a "company" or a "person," each of the two previous statements is sufficient to establish the exception of 103(c). However, Applicant submits the following supplemental statement in accordance with the Examiner's request in order to remove an issue for appeal. If 103 (c) were applied, claims 8-10, 14-17 would not be rejected based upon prior art.

¹ Page 16 of December 23, 2003 Amendment After Final

² Page 11 of September 22, 2003 Amendment

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Supplemental Statement

Pursuant to Section 103(c), the Smyers patent and the present application were, at the time the invention of the present application was made, owned by the same company, namely, Rehrig Pacific Company. This is further evidenced by the assignments of record of the Smyers patent and the present application to the Rehrig Pacific Company.

CONCLUSION

No fees are due because a full and complete response was filed within two months of the final rejection. If any additional fees or extensions are due, please charge all fees to deposit account no. 50-1984.

Respectfully submitted,



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